

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:075. Cabinet review procedures for KPDES permits.

6 RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-420, 224.10-440, 224.10-
7 470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124, 33 U.S.C. 1251-1387,~~[et seq.]~~

8 STATUTORY AUTHORITY: KRS 224.10-100~~(19)~~, 224.16-050, 224.70-110, 33 U.S.C.
9 1251-1387, ~~[et seq., 1342]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100~~(19)~~ authorizes the
11 ~~[Environmental and Public Protection]~~ cabinet to issue, continue in effect, revoke, modify, suspend
12 or deny ~~[under such conditions as the cabinet may prescribe,]~~ permits to discharge into any waters
13 of the Commonwealth. KRS 224.16-050(1) authorizes ~~[establishes that]~~ the cabinet to may issue
14 federal permits pursuant to 33 U.S.C. [USC Section] 1342(b) of the Federal Water Pollution
15 Control Act, 33 U.S.C. 1251-1387 ~~[(33 USC Section 1251 et seq.)]~~ subject to the conditions
16 imposed in 33 U.S.C. [USC Section] 1342(b) and (d). This administrative regulation establishes
17 ~~[sets forth]~~ the procedures for ~~[through which the cabinet will follow in]~~ receiving permit
18 applications, preparing draft permits, issuing public notice, inviting public comment, and holding
19 public hearings on draft permits.

20 Section 1. Review of the Application. An application for a KPDES permit shall be submitted
21 and reviewed as established in 40 C.F.R. 124.3, effective July 1, 2009. ~~[(1) Any person who~~

1 requires a permit under the KPDES program shall complete, sign, and submit to the cabinet an
2 application for the permit as required under 401 KAR 5:060, Section 1. Applications shall not be
3 required for KPDES general permits. Operators who elect to be covered by a general permit shall
4 submit written notification to the cabinet at the time the cabinet indicates in Section 3 of this
5 administrative regulation.

6 (2) The cabinet shall not begin the processing of a permit until the applicant has fully complied
7 with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

8 (3) Permit applications shall comply with the signature and certification requirements of 401
9 KAR 5:060, Section 9.

10 (4) The cabinet shall review for completeness every application for a KPDES permit. Each
11 application submitted by a KPDES new source or KPDES new discharger shall be reviewed for
12 completeness by the cabinet within thirty (30) days of its receipt. Each application for a KPDES
13 permit submitted by an existing source shall be reviewed for completeness within sixty (60) days
14 of receipt. Upon completing the review, the cabinet shall notify the applicant in writing whether
15 the application is complete. If the application is incomplete, the cabinet shall list the information
16 necessary to make the application complete. If the application is for an existing source, the cabinet
17 shall specify in the notice of deficiency a date for submitting the necessary information. The
18 cabinet shall notify the applicant that the application is complete upon receiving this information.
19 After the application is completed, the cabinet may request additional information from an
20 applicant if necessary to clarify, modify, or supplement previously submitted material. Requests
21 for the additional information shall not render an application incomplete.

22 (5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be
23 denied and appropriate enforcement actions may be taken under KRS Chapter 224 and

1 ~~administrative regulations promulgated pursuant thereto.~~

2 ~~(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the~~
3 ~~processing of an application, the cabinet shall notify the applicant and a date shall be scheduled.~~

4 ~~(7) The effective date of an application shall be the date on which the cabinet notifies the~~
5 ~~applicant that the application is complete as provided in subsection (4) of this section.~~

6 ~~(8) For each application from a major facility new source, or major facility new discharger, the~~
7 ~~cabinet shall no later than the effective date of the application, prepare and mail to the applicant a~~
8 ~~project decision schedule. The schedule shall specify target dates by which the cabinet intends to:~~

9 ~~(a) Prepare a draft permit;~~

10 ~~(b) Give public notice;~~

11 ~~(c) Complete the public comment period, including any public hearing;~~

12 ~~(d) Issue a final permit; and~~

13 ~~(e) Complete any formal proceedings under this administrative regulation.~~

14 ~~(9) Conflicts of interest.~~

15 ~~(a) Any person who issues a permit shall be subject to the conflict of interest provisions of~~
16 ~~KRS 11A.020 and 11A.030. The director of the Division of Water shall not receive or have~~
17 ~~received during the previous two (2) years, a significant portion of income directly or indirectly~~
18 ~~from permit holders or applicants for a permit.~~

19 ~~(b) Any person aggrieved by the issuance of a permit under the KPDES administrative~~
20 ~~regulations may challenge the permit pursuant to Section 13 of this administrative regulation if~~
21 ~~paragraph (a) of this subsection has been violated.~~

22 ~~(c) The hearing officer shall remand any permit issued in violation of paragraph (a) of this~~
23 ~~subsection to the cabinet for reconsideration.~~

1 ~~(d) Following remand, any cabinet employee who reconsiders the permit shall be subject to the~~
2 ~~conflict of interest provisions set forth in paragraph (a) of this subsection. The reconsideration shall~~
3 ~~require a new public comment period and public hearing only if information offered during earlier~~
4 ~~permit proceedings was excluded by the cabinet as a direct result of a conflict of interest.]~~

5 Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or
6 Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as
7 established in 40 C.F.R. 124.5, effective July 1, 2009, except that appeals shall be heard as
8 established in Section 13 of this administrative regulation. ~~[(1) Permits may be modified,~~
9 ~~revoked and reissued, or revoked either at the request of any interested person, including the~~
10 ~~permittee, or upon the cabinet's initiative. Permits may only be modified, revoked and reissued, or~~
11 ~~revoked for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in~~
12 ~~writing and shall contain facts or reasons supporting the request.~~

13 ~~(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief~~
14 ~~written response giving a reason for the decision. Denials of requests for modification, revocation~~
15 ~~and reissuance, or revocation shall not be subject to public notice, comment, or hearings.~~

16 ~~(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under 401 KAR~~
17 ~~5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this administrative~~
18 ~~regulation incorporating the proposed changes. The cabinet may request additional information~~
19 ~~and, in the case of a modified permit, may require the submission of an updated permit application.~~
20 ~~In the case of revoked and reissued permits, the cabinet shall require the submission of a new~~
21 ~~application.~~

22 ~~(a) In a permit modification under this section, only those conditions to be modified shall be~~
23 ~~reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain~~

1 ~~in effect for the duration of the unmodified permit. If a permit shall be revoked and reissued under~~
2 ~~this section, the entire permit is reopened as if the permit had expired and was being reissued.~~
3 ~~During any revocation and reissuance proceeding, the permittee shall comply with all conditions of~~
4 ~~the existing permit until a new final permit is reissued.~~

5 (b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be subject to
6 the requirements of this section.

7 (4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070, Section 7, the
8 cabinet shall issue a notice of intent to revoke. A notice of intent to revoke shall be a type of draft
9 permit which follows the same procedure as any draft permit prepared under Section 3 of this
10 administrative regulation.]

11 Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40
12 C.F.R. 124.6, effective July 1, 2009. [(1) Once an application is complete, the cabinet shall
13 preliminarily decide whether to prepare a draft permit or to deny the application.

14 (2) If the cabinet makes a preliminary decision to deny the permit application, the cabinet shall
15 issue a notice of intent to deny. A notice of intent to deny the permit application shall be a type of
16 draft permit which follows the same procedure as any draft permit prepared under this section. If
17 the cabinet's determination under Section 11 of this administrative regulation is that the
18 preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw the
19 notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

20 (3) If the cabinet makes a preliminary decision to issue a KPDES general permit, the cabinet
21 shall prepare a draft general permit in accordance with subsection (4) of this section.

22 (4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft permit that
23 contains the following information:

1 ~~(a) All conditions under 401 KAR 5:065, Section 1;~~
2 ~~(b) All compliance schedules under 401 KAR 5:070, Section 2;~~
3 ~~(c) All monitoring requirements under 401 KAR 5:070, Section 3; and~~
4 ~~(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401~~
5 ~~KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all~~
6 ~~variances that are to be included.~~

7 ~~(5) All draft permits prepared by the cabinet under this section shall be accompanied by a fact~~
8 ~~sheet and shall be based on the administrative record, publicly noticed, and made available for~~
9 ~~public comment. The cabinet shall give notice of opportunity for a public hearing, issue a final~~
10 ~~decision, and respond to comments. A demand for a hearing may be made pursuant to KRS~~
11 ~~224.10-420 and Section 13 of this administrative regulation following the issuance of a final~~
12 ~~decision.]~~

13 Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8,
14 effective July 1, 2009. ~~[(1) A fact sheet shall be prepared for every draft permit for a major KPDES~~
15 ~~facility or activity, for every KPDES general permit, for every KPDES draft permit that~~
16 ~~incorporates a variance or requires an explanation under subsection (3) of this section, and for~~
17 ~~every draft permit which the cabinet finds is the subject of widespread public interest or raises~~
18 ~~major issues. The fact sheet shall briefly set forth the principal facts and the significant factual,~~
19 ~~legal, methodological, and policy questions considered in preparing the draft permit. The cabinet~~
20 ~~shall send this fact sheet to the applicant and, on request, to any other persons.~~

21 ~~(2) The fact sheet shall include, if applicable:~~

22 ~~(a) A brief description of the type of facility or activity which is the subject of the draft permit;~~

23 ~~(b) A quantitative and qualitative description of the discharges described in the application;~~

1 ~~(c) A brief summary of the basis for the draft permit conditions including references to~~
2 ~~applicable statutory or regulatory provisions;~~

3 ~~(d) Reasons why any requested variances or alternatives to required standards do or do not~~
4 ~~appear justified;~~

5 ~~(e) A description of the procedures for reaching a final decision on the draft permit including:~~

6 ~~1. The beginning and ending dates of the comment period under Section 5 of this~~
7 ~~administrative regulation and the address where comments will be received;~~

8 ~~2. Procedures for requesting a hearing and the nature of that hearing;~~

9 ~~3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative~~
10 ~~regulation by which the public may participate in the final decision;~~

11 ~~(f) Name and telephone number of a person to contact for additional information; and~~

12 ~~(g) Any calculations or other necessary explanation of the derivation of specific effluent~~
13 ~~limitations and conditions, including a citation to the applicable effluent limitation guidelines or~~
14 ~~performance standard provisions, and reasons why they are applicable or an explanation of how the~~
15 ~~alternate effluent limitations were developed.~~

16 ~~(3)(a) If the draft permit contains any of the following conditions, an explanation of the reasons~~
17 ~~why the conditions are applicable:~~

18 ~~1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);~~

19 ~~2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8);~~

20 ~~3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);~~

21 ~~4. Limitations set on a case by case basis under 401 KAR 5:080, Section 1(2)(c)2; or~~

22 ~~5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).~~

23 ~~(b) For every permit to be issued to a treatment works owned by a person other than the~~

1 ~~Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users~~
2 ~~under 401 KAR 5:065, Section 2(12).~~

3 ~~(4) If appropriate, a sketch or detailed description of the location of the discharge described in~~
4 ~~the application.~~

5 ~~(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.]~~

6 Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a
7 permit action and the public comment period shall be as established in 40 C.F.R. 124.10, effective
8 July 1, 2009. ~~[(1) Scope:~~

9 ~~(a) The cabinet shall give public notice that the following actions have occurred:~~

10 ~~1. A permit application has been preliminarily denied under Section 3(2) of this administrative~~
11 ~~regulation;~~

12 ~~2. A draft permit has been prepared under Section 3(4) of this administrative regulation;~~

13 ~~3. A hearing has been scheduled under Section 7 of this administrative regulation; or~~

14 ~~4. A KPDES new source determination has been made in accordance with the definition in 401~~
15 ~~KAR 5:002.~~

16 ~~(b) Public notice shall not be required if a request for permit modification, revocation and~~
17 ~~reissuance, or revocation is denied under Section 2 of this administrative regulation. Written notice~~
18 ~~of that denial shall be given to the requester and to the permittee.~~

19 ~~(c) Public notices may describe more than one (1) permit or permit action.~~

20 ~~(2) Timing:~~

21 ~~(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a~~
22 ~~permit application, required under subsection (1) of this section shall allow at least thirty (30) days~~
23 ~~for public comment.~~

1 ~~(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing.~~
2 ~~Public notice of the hearing may be given at the same time as public notice of the draft permit and~~
3 ~~the two (2) notices may be combined.~~

4 ~~(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be~~
5 ~~given by the following methods:~~

6 ~~(a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5 of this~~
7 ~~paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their~~
8 ~~rights to receive notice for any classes and categories of permits.~~

9 ~~1. The applicant, except for KPDES general permittees, and Region IV, EPA.~~

10 ~~2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the~~
11 ~~Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate~~
12 ~~government authorities, including any affected states;~~

13 ~~3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National~~
14 ~~Marine Fisheries Service;~~

15 ~~4. Any user identified in the permit application of a privately owned treatment works; and~~

16 ~~5. Persons on a mailing list developed by:~~

17 ~~a. Including those who request in writing to be on the list;~~

18 ~~b. Soliciting persons for area lists from participants in past permit proceedings in that area; and~~

19 ~~c. Notifying the public of the opportunity to be put on the mailing list through periodic~~
20 ~~publication in the public press and in such publications as newsletters, environmental bulletins, or~~
21 ~~state law journals. The cabinet may update the mailing list from time to time by requesting written~~
22 ~~indication of continued interest from those listed. The cabinet may delete from the list the name of~~
23 ~~any person who fails to respond to that request.~~

1 ~~(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily~~
2 ~~or weekly newspaper within the area affected by the facility or activity;~~

3 ~~(c) In a manner constituting legal notice to the public under Kentucky law; and~~

4 ~~(d) Any other method reasonably calculated to give actual notice of the action in question to~~
5 ~~the persons potentially affected by it, including press releases or any other forum or medium to~~
6 ~~elicit public participation.~~

7 ~~(4) Contents.~~

8 ~~(a) All public notices. All public notices issued under this administrative regulation shall~~
9 ~~contain the following minimum information:~~

10 ~~1. Name and address of the office processing the permit action for which notice is being given;~~

11 ~~2. Name and address of the permittee or permit applicant and, if different, of the facility or~~
12 ~~activity regulated by the permit, except for KPDES draft general permits under 401 KAR 5:055,~~
13 ~~Section 5;~~

14 ~~3. A brief description of the business conducted at the facility or activity described in the~~
15 ~~permit application or the draft permit, for KPDES general permits if there is no application;~~

16 ~~4. Name, address, and telephone number of a person from whom interested persons may obtain~~
17 ~~further information, including copies of the draft permit or draft general permit as the case may be,~~
18 ~~fact sheet, and the application;~~

19 ~~5. A brief description of the comment procedures required by Sections 6 and 7 of this~~
20 ~~administrative regulation and the time and place of any hearing that will be held, including a~~
21 ~~statement of procedures to request a hearing, unless a hearing has already been scheduled, and~~
22 ~~other procedures by which the public may participate in the final permit decision;~~

23 ~~6. A general description of the location of each existing or proposed discharge point and the~~

1 ~~name of the receiving water. For draft general permits, this requirement shall be satisfied by a map~~
2 ~~or description of the permit area; and~~

3 ~~7. Any additional information considered necessary or proper.~~

4 ~~(b) Public notices for hearings. In addition to the general public notice described in paragraph~~
5 ~~(a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative~~
6 ~~regulation shall contain the following information:~~

7 ~~1. Reference to the date of previous public notices, relating to the permit;~~

8 ~~2. Date, time, and place of the hearing; and~~

9 ~~3. A brief description of the nature and purpose of the hearing, including the applicable rules~~
10 ~~and procedures.~~

11 ~~(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under~~
12 ~~subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge if a 401~~
13 ~~KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall include:~~

14 ~~1. A statement that the thermal component of the discharge is subject to effluent limitations~~
15 ~~under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of~~
16 ~~the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 USC Sections 1311~~
17 ~~or 1316); and~~

18 ~~2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative~~
19 ~~less stringent effluent limitations may be imposed on the thermal component of the discharge and a~~
20 ~~brief description, including a quantitative statement, of the alternative effluent limitations, if any,~~
21 ~~included in the request.~~

22 ~~(5) In addition to the general public notice described in subsection (4)(a) of this section all~~
23 ~~persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a copy of the fact~~

1 ~~sheet, the permit application (if any) and the draft permit (if any).]~~

2 Section 6. Public Comments and Requests for Public Hearings. Provisions for public
3 comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11, effective
4 July 1, 2009. ~~[During the public comment period provided under Section 5 of this administrative~~
5 ~~regulation, any interested person may submit written comments on the draft permit and may~~
6 ~~request a public hearing, if no hearing has already been scheduled. A request for a public hearing~~
7 ~~shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All~~
8 ~~comments shall be considered in making the final decision and shall be answered as provided in~~
9 ~~Section 12 of this administrative regulation.]~~

10 Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R.
11 124.12, effective July 1, 2009. ~~[(1) The cabinet shall hold a public hearing if a significant degree of~~
12 ~~public interest in a draft permit is found on the basis of requests. The cabinet also may hold a~~
13 ~~public hearing if, for instance, a hearing might clarify one (1) or more issues involved in the permit~~
14 ~~decision.~~

15 ~~(2) Public notice of the hearing shall be given as specified in Section 5 of this administrative~~
16 ~~regulation.~~

17 ~~(3) Any person may submit oral or written statements and data concerning the draft permit.~~
18 ~~Reasonable limits may be set upon the time allowed for oral statements, and the submission of~~
19 ~~statements in writing may be required. The public comment period under Section 5 of this~~
20 ~~administrative regulation shall automatically be extended to the close of any public hearing under~~
21 ~~this section. The cabinet may also extend the comment period by so stating at the hearing.~~

22 ~~(4) A tape recording or written transcript of the hearing shall be made available to the public.]~~

23 Section 8. Obligation to Raise Issues and Provide Information During the Public Comment

1 Period. An obligation to raise issues and provide information during the public comment period
2 shall be as established in 40 C.F.R. 124.13, effective July 1, 2009. [~~All persons, including~~
3 ~~applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's~~
4 ~~preliminary decision to deny an application, revoke a permit, or prepare a draft permit is~~
5 ~~inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available~~
6 ~~arguments and factual grounds supporting their position, including all supporting material, by the~~
7 ~~close of the public comment period including any public hearing under Section 5 of this~~
8 ~~administrative regulation. All supporting materials shall be included in full and may not be~~
9 ~~incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or~~
10 ~~the cabinet's documents of general applicability, or other generally available reference materials.~~
11 ~~Commenters shall make supporting material not already included in the record available to the~~
12 ~~cabinet as directed by the cabinet. A comment period longer than thirty (30) days may be necessary~~
13 ~~in complicated proceedings to give commenters a reasonable opportunity to comply with the~~
14 ~~requirements of this section. Commenters may request longer comment periods, which may be~~
15 ~~established under Section 5 of this administrative regulation. Nothing in this section shall be~~
16 ~~construed to prevent any person aggrieved by a final permit decision from filing a demand for a~~
17 ~~hearing under KRS 224.10-420 and Section 13 of this administrative regulation.] Section 9.~~

18 Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions
19 requested by the Corps of Engineers or another government agency shall be as established in 40
20 C.F.R. 124.59, established July 1, 2009.

21 [(1)If during the comment period for a KPDES draft permit, the district engineer of the Corps
22 of Engineers advises the cabinet in writing that anchorage and navigation of any of the waters of
23 the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be

1 ~~denied and the applicant so notified. If the district engineer advises the cabinet that imposing~~
2 ~~specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage~~
3 ~~or navigation, then the cabinet shall include the specified conditions in the permit. Review or~~
4 ~~appeal of denial of a permit or of conditions specified by the district engineer shall be made~~
5 ~~through the applicable procedures of the Corps of Engineers, and shall not be made through the~~
6 ~~procedures provided in this administrative regulation. If the conditions are stayed by a court of~~
7 ~~competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions~~
8 ~~shall be considered stayed in the KPDES permit for the duration of that stay.~~

9 ~~(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine~~
10 ~~Fisheries Service, or other state or federal agency with jurisdiction over fish, wildlife, or public~~
11 ~~health advises the director in writing that the imposition of specified conditions upon the permit is~~
12 ~~necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet may~~
13 ~~include the specified conditions in the permit to the extent they are determined necessary to carry~~
14 ~~out the provisions of KRS 224.~~

15 ~~(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred~~
16 ~~to in this section before issuing a draft permit and may reflect their views in the fact sheet or the~~
17 ~~draft permit.]~~

18 Section 10. Reopening of the Public Comment Period. The public comment period shall be
19 reopened as established in 40 C.F.R. 124.14, effective July 1, 2009. ~~[(1) If any data information or~~
20 ~~arguments submitted during the public comment period appear to raise substantial new questions~~
21 ~~concerning a permit, the cabinet may take one (1) or more of the following actions:~~

22 ~~(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative~~
23 ~~regulation;~~

~~(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or~~

~~(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.~~

~~(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.~~

~~(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.]~~

Section 11. Issuance and Effective Date of Permit.

(1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of that determination.

(b) The notification shall include reference to the procedures for appealing the decision.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) Comments did not request a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.

1 **(3)(a) The determination, which is a condition precedent to demanding a hearing**
2 **pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the**
3 **final permit decision.**

4 **(b) The thirty (30) day appeal period shall begin on the date the determination is entered**
5 **by the cabinet and shall not begin on the date the permit becomes effective.**

6 ~~**[The issuance and effective date of a KPDES permit shall be as established in 40 C.F.R.**~~
7 ~~**124.15, effective July 1, 2009.]**~~ [(1) After the close of the public comment period under Section 5

8 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or
9 revoke a permit. The cabinet shall notify the applicant and each person who has submitted written
10 comments or requested notice of that determination. This notice shall include reference to the
11 procedures for appealing the decision. For the purpose of this section, a final permit decision shall
12 mean a final decision to issue, deny, modify, revoke and reissue, or revoke a permit.

13 ~~(2) A final permit decision shall become effective thirty (30) days after the service of notice of~~
14 ~~the decision under subsection (1) of this section, unless:~~

15 ~~(a) A later effective date is specified in the decision;~~

16 ~~(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative~~
17 ~~regulation; or~~

18 ~~(c) No comments requested a change in the draft permit, and if that occurs, the permit shall~~
19 ~~become effective immediately upon issuance.~~

20 ~~(3) The determination which is a condition precedent to demanding a hearing under KRS~~
21 ~~224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision.~~
22 ~~The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet~~
23 ~~and shall not begin on the date the permit decision becomes effective.]~~

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17, effective July 1, 2009. ~~[(1) When any final permit decision is issued under Section 11 of~~

~~this administrative regulation the cabinet shall issue a response to comments. This response shall:~~

~~(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and~~

~~(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall fully consider all comments resulting from any hearing conducted under this administrative regulation.~~

~~(2) The response to comments shall be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.]~~

Section 13. Hearings pursuant to ~~[under]~~ KRS 224.10-420. (1) A determination pursuant to ~~[under]~~ Section 11 of this administrative regulation ~~[when issued by the cabinet]~~ shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A ~~[Any]~~ person aggrieved by the issuance of a final permit may request ~~[demand]~~ a hearing pursuant to KRS 224.10-420(2).

(3) A ~~[Any]~~ hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(4) Failure to raise an issue ~~[issued]~~ pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) “Waters of the Commonwealth” shall be substituted for “Waters of the United States” in

1 the federal regulations cited in this administrative regulation.

2 (2) “Cabinet” shall be substituted for “Director”, “EPA”, and “Regional Administrator” if the
3 authority to administer the federal regulations cited in this administrative regulation has been
4 delegated to the cabinet.

5 (3) “KPDES” shall be substituted for “NPDES” if the cabinet has been delegated authority to
6 implement the federal regulations cited in this administrative regulation.

7 (4) “Mail”, as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative
8 regulation, shall include electronic transmission.

401 KAR 5:075 “Cabinet review procedures for KPDES permits” (Amended after comments)
approved for promulgation:

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:075 AAC

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation establishes the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits..
- (b) The necessity of this administrative regulation:** KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 subject to the conditions imposed in 33 U.S.C.1342(b) and (d).
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation establishes the guidelines for processing permit applications for permits to discharge into waters of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This amendment revises ambiguous terms in accordance with KRS 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. The regulation was amended after comments to re-insert the state-specific language regarding issuance and effective dates of permits and the state-specific appeals process.
- (b) The necessity of the amendment to this administrative regulation:** This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations. The regulation was amended after comments to re-insert the state-specific language regarding issuance and effective dates of permits and the state-specific appeals process.
- (c) How the amendment conforms to the content of the authorizing statutes:** This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act.
- (d) How the amendment will assist in the effective administration of the statutes:** The amendment will aid in carrying out the goals of KRS 224. The amendment removes discrepancies between current state and federal regulations. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and

governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:

- a. 1600 businesses per year, through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.
- b. 100 organizations per year, through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.
- c. 30 governments per year, through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation are simply a change in style and remove any potential inconsistency between the state and corresponding federal regulation.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** No additional cost is anticipated.
- (b) On a continuing basis:** No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:075 AAC

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224 and the Clean Water Act, 33 U.S.C. 1251-1387

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 5:075 AAC

Contact Person: Peter T. Goodman, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 124 and 33 U.S.C. 1387

2. State compliance standards.

KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate.

The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.